

N.D.A.G. Letter to Hagerty (Oct. 8, 1986)

October 8, 1986

Ms. Gail Hagerty
Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Hagerty:

Thank you for your letter of September 5, 1986, in which you ask for my interpretation of the Retail Installment Sales Act as it relates to a stated set of facts.

The plan as described in the accompanying letter from Marilyn Foss provides that a closely held corporation will finance the purchase of property and casualty insurance policies by business and commercial entities in North Dakota. The business entity purchasing the insurance would execute a note payable to the financing corporation for the amount of the premium being financed in a contract containing a power of attorney which would allow the financing corporation or its assignee to cancel the policies and to receive any unearned premium refund upon a failure by the business to repay the full amount owed on schedule. The note and contract would obligate the business to repay the amount of premium financed plus interest at a stated rate and calculated by the "add-on" rather than the "simple interest" method. Personal guarantees of the full amount of the business debt could also be required.

Based on these facts, it does not appear that the Retail Installment Sales Act, N.D.C.C. Ch. 51-13, would be applicable to the proposed plan. The Retail Installment Sales Act is limited to "a sale, other than for the purpose of resale, of personal property by a retail seller to a retail buyer for a price payable in one or more deferred payments." (Emphasis supplied.) N.D.C.C. § 51-13-01(11). Retail seller is defined as "a person who sells personal property to a retail buyer." N.D.C.C. §51-13-01(12). In the facts presented by Ms. Foss, the closely held corporation is merely acting as a third party lender and would not constitute a "retail seller" as defined in N.D.C.C. Ch. 51-13. As such, the Retail Installment Sales Act would not be applicable to the transaction described in the letter.

In the event that the corporation engages in selling insurance policies to business entities and finances the premium on such policies, this type of transaction would constitute a "retail installment" sale subject to the requirements of N.D.C.C. Ch. 51-13. However, N.D.C.C. § 51-13-06.2 specifically exempts from the requirements of N.D.C.C. Ch. 51-13 the retail installment sales of personal property if "the personal property is to be used primarily for a business, commercial, or agricultural purpose, not a personal, family, or household purpose." The plan contemplated in the letter seemingly is restricted to sales to

business and commercial entities in North Dakota. Thus, the exemption in N.D.C.C. §51-13-06.2(2) is applicable.

It is necessary that I emphasize that my interpretation of N.D.C.C. Ch. 51-13 is presented in light of the facts as described in Marilyn Foss' letter to you. The prosecution by a local state's attorney for an alleged violation of N.D.C.C. Ch. 51-13 will always depend upon the facts of each case as perceived by the prosecutor.

Sincerely,

Nicholas J. Spaeth

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